

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

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In the Matter of the Arbitration Between

Name of Claimant(s)

James A. Nadeau, Trustee

92-03014

Name of Respondent(s)

Hopper Soliday and Co., Inc.  
W.H. Newbold's & Sons Co.  
Fahnestock & Co., Inc.  
Jeremy W.Y. Hall

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REPRESENTATION

For Claimant, James A. Nadeau, Trustee: Samuel M. Shafner, Esq. of the law firm of Shafner & Gilleran.

For Respondents, Hopper Soliday and Co., Inc. and W.H. Newbold's & Sons Co.: Michael Unger, Esq. of the law firm Goldstein & Manello, P.C.

For Respondent, Fahnestock & Co., Inc.: Charles E. Padgett, Esq. of Fahnestock & Co.

For Respondent, Jeremy W.Y. Hall: Wilbur H. Glehn, III, of the law firm of McLane, Graf, Raulerson & Middleton.

CASE INFORMATION

Statement of Claim filed: September 4, 1992.

Amended Statement of Claim filed: September 11, 1992.

Claimant's Submission Agreement signed on: October 9, 1992.

Statement of Answer filed by Respondent, W.H. NEWBOLD'S & SONS CO. on: December 30, 1992.

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Respondent, W.H. NEWBOLD'S & SONS CO.'s, Submission Agreement signed on: September 8, 1993.

Response to Motion to Amend filed by Respondent FAHNESTOCK & CO., INC. on: October 1, 1992.

Objection to Amended Statement of Claim filed by Respondent FAHNESTOCK & CO., INC. on: December 4, 1992.

Amended Statement of Answer filed by Respondent, FAHNESTOCK & CO., INC. on: February 3, 1993.

Respondent, FAHNESTOCK & CO., INC.'s, Submission Agreement signed on: September 8, 1993.

Statement of Answer filed by Respondent, JEREMY W.Y. HALL on: December 16, 1992.

Respondent, JEREMY W.Y. HALL's, Submission Agreement signed on: December 16, 1992.

Respondent, HOPPER SOLIDAY AND CO., INC., did not file a Statement of Answer, nor execute a Submission Agreement, as required pursuant to Section 25 of the Code of Arbitration Procedure.

### **HEARING INFORMATION**

Hearing Dates/Sessions:	September 8, 1993 / Two Sessions
	September 9, 1993 / One Session
	September 21, 1993 / Two Sessions
	September 22, 1993 / Two Sessions

Hearing Location:	NASD offices located at 260 Franklin Street, 16th Floor, Boston, Massachusetts, 02110.
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### **CASE SUMMARY**

Claimant, alleged that Respondent, JEREMY W.Y. HALL ("HALL"), was negligent in his handling of the trade complained of herein. Claimant further alleged that Respondent HOPPER SOLIDAY & CO. ("HOPPER"), was negligent in its failure to properly supervise HALL, and breached the fiduciary duty owed to Claimant. Claimant further alleged that Respondents W.H. NEWBOLD'S SON & CO. ("NEWBOLD") and FAHNESTOCK & CO., INC. ("FAHNESTOCK"), were liable as successors in interest to HOPPER.

Claimant alleged that he was persuaded by HALL to invest in index options, a field in which Claimant was ignorant. Claimant further alleged the basis for his claim was that HALL was aware of Claimant's lack of knowledge of index options, and that Claimant was relying solely on Hall's advice and purported expertise in making the trade complained of herein; that HALL's lack of understanding and experience of the technicalities of the index option trading process resulted in his providing Claimant with incorrect information and advice; and the false and misleading statements resulted in Claimant taking a course of action which ultimately led to Claimant incurring a loss of \$67,500.00, and a failure to receive a profit of approximately \$10,000.00 had the trade been executed correctly.

Claimant alleged that HALL's negligence included his (1) failure to realize what the true value of the index options were, which led to an unnecessary fear of an assignment taking place, (2) incorrect advice to buy out one half of the "spread," which needlessly put Claimant at grave risk and (3) incorrect advice to use a market order rather than limit order, and informing Claimant, incorrectly, that the order was freely cancelable.

Claimant alleged that HOPPER was negligent, and breached its fiduciary duty to Claimant, by failing to properly supervise, train and educate its employee, HALL, who was held out to have expertise in the trading of index options. Claimant further alleged that HOPPER was also liable under the doctrine of respondeat superior.

Lastly, Claimant alleged that NEWBOLD and FAHNSTOCK are liable for the allegations discussed above, because they are successors in interest to HOPPER.

Respondent, HALL, maintained that Claimant was an experienced and sophisticated investor who understood and was willing to assume the strategies, risks and procedures involved with the type of trading which is the basis of this claim, as evidenced by Claimant's trading practices. Further, Respondent HALL maintained that upon opening the account Nadeau represented to Hall that he was an active trader and that he would not be seeking or needing investment advice. HALL maintained that based on Nadeau's representation, Respondents agreed to give Nadeau commission discounts similar to those he enjoyed while trading with Stockcross, a discount brokerage firm in Boston. Furthermore, HALL maintained while HALL sometimes offered suggestions, Claimant rarely acted on those recommendations and Claimant traded on an unsolicited basis, and regarding this claim in particular, Claimant formulated, and acted upon his own strategy.

Respondent, HALL, maintained that his advice was not fraudulent, in that HALL's statement that the "market order was cancelable before execution" was accurate, and that Claimant made his own decisions, therefore Claimant could not have relied on HALL's representation. Respondent HALL maintained that he advised Claimant that Claimant would be "gambling" if he were to "lift the leg" of his index option spread.

Respondent, HALL, asserted that Claimant's claim is barred by reason of his own fiduciary duty as trustee and Claimant's assertion that he did not understand index option trading breached his fiduciary duty to the trust. HALL further maintained that any claims against him are barred by Claimant's own wrongful conduct and negligence, and by his failure to mitigate his damages.

Respondent, NEWBOLD, maintained that Claimant's loss was a result of Claimant's decisions, and that Claimant knowingly took the risks involved, and therefore, Claimant bears the responsibility and consequences. NEWBOLD adopted Respondent HALL's Statement of Answer.

Respondent, NEWBOLD, denied the allegations in the causes of action directed specifically at it as NEWBOLD promptly communicated to Claimant that it had investigated the matter, and found the claims to be unmeritorious.

Respondent, NEWBOLD, further maintained that it is no longer a broker-dealer or an operating company, HOPPER is no longer a division of NEWBOLD, HOPPER no longer exists, and NEWBOLD has no cash, operations or viability.

Respondent HOPPER SOLIDAY did not submit a Statement of Answer but adopted the Statement of Answer of Respondent W.H. NEWBOLD & SON'S CO., INC.

Respondent, FAHNESTOCK, adopted the Statements of Answer of the other Respondents. FAHNESTOCK maintained that it has no knowledge of the transaction complained of, nor was Respondent, HALL, ever associated with FAHNESTOCK nor was Claimant ever a public customer of FAHNESTOCK and FAHNESTOCK never entered into an arbitration agreement with the Claimant. FAHNESTOCK further maintained that the claim against it contains no factual basis for the assertion that it is a "successor in interest to the retail assets of some or all of the corporate Respondents," nor is it claimed that FAHNESTOCK has successor liability.

#### **RELIEF REQUESTED**

Claimant requested: damages of \$77,500.00, plus interest damages in the amount of \$31,080.90, plus treble and/or punitive damages, attorneys' fees and costs.

Respondent, HALL, requested: that all claims against him be denied, and that he be awarded attorneys' fees.

Respondent, NEWBOLD, requested: that all claims against it be denied, and that it be awarded attorney's fees.

Respondent, FAHNESTOCK, requested: that all claims against it be denied, and that it be awarded costs.

Respondent, HOPPER SOLIDAY, requested: that all claims against it be denied, and that it be awarded attorney's fees.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents, HOPPER SOLIDAY & CO., INC., W.H. NEWBOLD'S SON & CO., INC., FAHNESTOCK & CO., INC., and JEREMY W.Y. HALL, be and hereby are dismissed in all respects.
2. The Claimant's request for treble and/or punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

7 sessions X \$750.00 = \$5,250.00 minus hearing session deposit of \$500.00 = \$4,750.00 plus \$50.00 from Claim Filing Fee deficiency = net \$4,800.00 due.

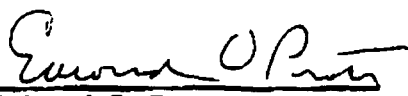
Forum fees Assessed Against: The Claimant, JAMES A. NADEAU, as Trustee, be and hereby, is liable and shall pay to the NASD the sum of \$4,300.00 to represent forum fees and Respondent, FAHNESTOCK & COMPANY, INC., be and hereby, is liable and shall pay to the NASD the sum of \$500.00 to represent forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

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**ARBITRATORS' SIGNATURE**

  
Mary C. Kelleher  
Mary C. Kelleher  
Public Arbitrator

  
Edward O. Proctor  
Edward O. Proctor, Esq.  
Public Arbitrator - The above arbitrator concurs with all findings with  
the exception of the ruling on attorneys' fees.

  
William S. Tagerman  
William S. Tagerman  
Industry Arbitrator

Date of Decision: December 21, 1993